

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PRISCILLA SALZBERG, : 17-CV-2361 (BMC)
Plaintiff, :
-against- : United States Courthouse
CITY OF NEW YORK, : Brooklyn, New York
Defendant. : Friday, June 16, 2017
- - - - -X : 4:30 p.m.

TRANSCRIPT OF CIVIL CAUSE FOR INITIAL CONFERENCE
BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Plaintiff: LAW OFFICE OF LOCKSLEY O. WADE
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PROCEEDINGS RECORDED BY STENOGRAPHIC MACHINE SHORTHAND,
TRANSCRIPT PRODUCED BY COMPUTER-ASSISTED TRANSCRIPTION.

Proceedings

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1 (In open court.)

2 THE COURTROOM DEPUTY: All rise.

3 THE COURT: Good afternoon. Have a seat, please.

4 THE COURTROOM DEPUTY: Salzberg versus City of
5 New York, Docket Number 17-CV-2361.

6 Counsel, please state your name for the record.

7 MR. WADE: Locksley Wade for the Plaintiff
8 Priscilla Salzberg.

9 MS. BI: Shirley Bi, Assistant Corporation Counsel
10 for Defendant City of New York.

11 THE COURT: Okay. Mr. Wade, what is with not
12 consenting to an initial extension to answer from your
13 adversary; what is with that?

14 MR. WADE: I believe it was a ruse, and I don't
15 believe that was done in good faith.

16 THE COURT: It is an initial extension.

17 MR. WADE: I understand, Your Honor.

18 THE COURT: I mean, I can guarantee you, sometime in
19 this case you are going to want an extension.

20 MR. WADE: I'm fully aware of that, Your Honor. But
21 this case is an exception.

22 THE COURT: Okay.

23 MR. WADE: I mean, I -- I normally would grant it,
24 but this is an exception.

25 THE COURT: Okay.

Proceedings

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1 The discovery plan you have is fine. Obviously, I
2 am keeping an open mind on the motion until I get the
3 opposition.

4 It is kind of thinly pled, don't you think,
5 Mr. Wade? I mean, it is -- particularly in a statute where it
6 has got to be the sole motivating factor was her disability,
7 the sole factor, you kind of admitted in the complaint that
8 she had some performance problems.

9 MR. WADE: Well, case law in this circuit shows that
10 solely is not the necessary plea. It doesn't have to be read
11 that originally. As a matter of fact, recently, Judge Spatt,
12 ruled on something like this where the State of New York
13 wanted to use the word "solely," and that he looked throughout
14 the amendments -- or rather he looked at Section D of the
15 rehabilitation act, which refers you to the amendments.
16 Throughout the act it goes solely, because, by reason of.
17 It's all over. So solely is not the pleaded standard as the
18 sole -- I mean, you don't have to use those magic words to
19 say --

20 THE COURT: No, I agree. You do not have to use the
21 magic words. I think that is clear.

22 I just wonder if the facts you have pled are
23 consistent with a determination or a conclusion that the
24 wrongs you are complaining about were due solely to her
25 condition. But, you know, I will look at it. I am happy to

Proceedings

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1 see whatever you submit to me.

2 MR. WADE: All right.

3 THE COURT: The discovery plan you have is fine. I
4 have no problem with that.

5 Can I get your word of honor that we really mean it
6 and we are really going to stick to it?

7 MS. BI: Well, Your Honor, before we agree on the
8 discovery plan, I'm asking the Court to stay discovery pending
9 the adjudication of the motion to dismiss.

10 THE COURT: I am not going to do that. But if I
11 find that, you know, it turns out to be a frivolous case, then
12 I will just sanction Plaintiff for attorney's fees, so your
13 work will not be for nothing.

14 But I -- you know, the motion is not such a slam
15 dunk that I am going to say, No way is there a claim here; and
16 therefore, I am going to stay discovery. I would if I felt
17 that, but I don't.

18 So I want it understood, the December 14th date,
19 that is a real date, right?

20 MR. WADE: Yes, Your Honor.

21 MS. BI: Yes, Your Honor.

22 THE COURT: All right.

23 MR. WADE: Oh, one question, Your Honor.

24 THE COURT: Sure.

25 MR. WADE: Since you announced that you're not going

Proceedings

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1 to stay the case, would I have to address that in my motion?

2 THE COURT: No.

3 MR. WADE: My response to her --

4 THE COURT: No, no.

5 She has not filed a motion to stay the case. She
6 suggested to me that she might want to or maybe she asked me
7 now if I would -- I think it was the latter -- and I said, No,
8 I will not, so we are not.

9 MR. WADE: Well, actually, in her letter to the
10 Court asking for a premotion conference at the last paragraph,
11 she did ask for a stay.

12 THE COURT: Right. But I am not. I am not. It is
13 a simple case. There are only a few people involved for the
14 employer and, you know, a few depositions and this case is
15 done. So I think the September 14th date is realistic. You
16 ought to be able to achieve it. Let's try to achieve it. And
17 if I keep the case -- you know, like I said, I am keeping an
18 open-mind on the motion -- but if the case stays, let's finish
19 it by September 14th.

20 MS. BI: Understood, Your Honor.

21 MR. WADE: I understand. Thank you, Your Honor.

22 THE COURT: And I have lot of time, so plan on it
23 going to trial. And if not, dispose of it by motion in the
24 early fall, okay?

25 MR. WADE: Okay.

1 THE COURT: Okay. Thank you for coming in. Please
2 try to get along, okay?

3 MS. BI: Thank you.

4 THE COURT: It is just a case.

5 MR. WADE: I will, Your Honor.

6 MS. BI: Thank you.

7 THE COURT: All right. Thank you.

8 (Matter concluded.)

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15 *I (we) certify that the foregoing is a correct transcript*
16 *from the record of proceedings in the above-entitled matter.*

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17 /s/ David R. Roy
DAVID R. ROY

14th Day of July, 2017
Date

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